

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6875

Petition of Gas-Watt Energy, LLC., requesting: (1) a )  
certificate of public good authorizing the construction )  
and operation of a gas-fueled electrical generating )  
facility at the Chittenden Solid Waste District Landfill )  
located in Williston, Vermont; (2) that Green Mountain )  
Power Corporation enter into a Power Purchase )  
Agreement; and (3) the determination of ownership of )  
Renewable Energy Credits )

Hearings at  
Montpelier, Vermont  
November 6, 2003

Order entered: 4/7/2004

PRESENT: Wayne L. Foster, Hearing Officer<sup>1</sup>

APPEARANCES: Edward DeVarney, Pro Se  
for Gas-Watt Energy, LLC

Harriet Ann King, Esq.  
King & King  
for Green Mountain Power Corporation

Geoffrey Commons, Esq.  
for Vermont Department of Public Service

**I. INTRODUCTION**

This case concerns a petition filed by Gas-Watt Energy, LLC ("Gas-Watt") on July 28, 2003, requesting a certificate of public good ("CPG") authorizing the construction and operation of a landfill gas-fueled electric generating facility at the Chittenden Solid Waste District Landfill, located in the Town of Williston, Vermont.

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1. Due to the retirement of Mr. Foster, the Board has appointed Gregg Faber, Utilities Analyst, as Hearing Officer for the remainder of this docket.

The petition also requests that the Board require Green Mountain Power Corporation ("GMP") to enter into a Power Purchase Agreement with Gas-Watt and, in addition, the petition seeks a determination from the Board concerning the ownership of the Renewable Energy Credits that the proposed project will create. Based upon subsequent correspondence from Gas-Watt and GMP to the Board, plus statements made by these two parties at the November 6, 2003, hearing, these additional issues have been resolved and need no further consideration by the Board.<sup>2</sup>

On October 9, 2003, a public hearing was held in Williston, Vermont. Notice of the public hearing was sent to all parties and interested persons on September 17, 2003. In addition, notice of the public hearing was published in "The Burlington Free Press" on September 19 & 26, 2003. The public hearing was held as scheduled in the Public Meeting Room of the Dorothy Alling Library, located at 21 Library Lane, Williston, Vermont. Also, on October 9, 2003, a site visit was held at 5:00 p.m.

Notice of the technical hearing was sent on October 23, 2003, to all parties specified in 30 V.S.A. § 248 and all other interested parties. A technical hearing was held as scheduled on November 6, 2003, at 9:30 a.m. at the Public Service Board Hearing Room, Third Floor, Chittenden Bank Building, 112 State Street, Montpelier, Vermont. No one appeared in opposition to the petition and substantial evidence was presented in support of the petition.

On October 22, 2003, the DPS filed a determination, pursuant to 30 V.S.A. § 202(f), that the proposed project is consistent with the Vermont Twenty-Year Electric Plan.

## **II. FINDINGS**

Pursuant to 30 V.S.A. § 8, and based on the record and evidence before me, I present the following findings of fact and conclusions of law to the Board.

1. Gas-Watt is a Vermont corporation, as defined by the laws of the State of Vermont, with its business address at 284 Route 7 South in Milton, Vermont. Pet. at 1.
2. Gas-Watt is in the business of developing landfill gas-fueled electric generating projects and wind powered net-metered farm system electric generating projects. Pet. at 1.

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2. A Short-Term Nonlevelized Power Purchase Agreement and an Interconnection Agreement between GMP and Gas-Watt were subsequently filed with the Board on January 16, 2004.

3. Gas-Watt is proposing to construct a 90 kW landfill gas-fueled electric generating plant at the Chittenden Solid Waste District ("CSWD") Landfill, located in the Town of Williston, Vermont. Pet. at 1; DeVarney pf. at 1-2; exh. A.

4. The proposed project is a qualifying facility as defined in the Public Utilities Regulatory Policies Act of 1978 (18 CFR 292.201 et. seq.) and a small power producer within the meaning of 30 V.S.A. § 209(a)(8) and Board Rule 4.100. Pet. at 1; exh. I.

5. The proposed project will consist of three reciprocating internal combustion engines, each with a 30 kW synchronous generator, all housed in a single story 600 sq. ft. building. DeVarney pf. at 2; exh. B.

6. The electrical output of the proposed facility will be connected to the existing distribution system of GMP. Exh. I.

7. On June 22, 2001, the CSWD entered into a ten-year contract with Gas-Watt for the exclusive right to use the landfill gas produced at the site for the generation of electricity. Exh. A.

8. The proposed project will make use of the existing gas collection system at the landfill and none will have to be constructed. DeVarney pf. at 2.

9. The estimated total cost of the proposed project is less than \$70,000. Tr. at 27.

10. On December 5, 2003, GMP and Gas-Watt entered into a Short-Term Nonlevelized Power Purchase Agreement and an Interconnection Agreement ("Power Purchase Agreement"). See Power Purchase Agreement, filed on January 16, 2004.

### **Orderly Development of the Region**

[30 V.S.A. § 248(b)(1)]

11. The proposed project will not unduly interfere with the orderly development of the region, due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality. This finding is supported by findings 12-13, below.

12. Gas-Watt met with the Town of Williston Development Review Board ("WDRB") on July 9, 2002, to discuss the proposed project. In a letter to the Board, dated July 26, 2002, the

WDRB recommended approval of the proposed project and requested that a lock box be installed on the power facility building and emergency contact information be provided to the Williston Fire Chief prior to construction of the building, to which Gas-Watt has agreed. DeVarney pf. at 4; exhs. B & R.

13. On July 28, 2003, the Chittenden County Regional Planning Commission ("CCRPC") submitted a letter, dated July 18, 2003, to the Board stating that the proposed project does not have any negative regional impact and it is in compliance with the 2001 Chittenden County Regional Plan. In addition, the letter stated that the CCRPC waived the 45-day notice requirement provision of 30 V.S.A. § 248(f). Exh. S.

**Need For Present and Future Demand for Service**

[30 V.S.A. § 248(b)(2)]

14. The proposed project is required to meet the need for the present and future demand for service which could not otherwise be provided in a more cost effective manner through energy conservation programs and measures and energy-efficiency programs and measures, based on the conditions set forth in the proposed order. This finding is supported by findings 15-16, below.

15. Chittenden county has experienced significant peak load growth over the past decade, prompting the proposal of an upgrade of the statewide electric transmission system by VELCO. DeVarney pf. at 4; exh. G.

16. The proposed project which provides distributed electrical generation utilizing renewable resources, is a desirable means of meeting demand for electricity. DeVarney pf. at 4.

**System Stability and Reliability**

[30 V.S.A. § 248(b)(3)]

17. The proposed project will not adversely affect system stability and reliability. This finding is supported by finding 18, below.

18. The interconnection arrangement with the GMP system will ensure that any instability or failure within the proposed project is not transmitted to the GMP system. The proposed project will be interconnected in accordance with the requirements of Board Rule 4.100. DeVarney pf. at 5; exhs. H & I.

**Economic Benefit to the State**

[30 V.S.A. § 248(b)(4)]

19. The proposed project will result in an economic benefit to the State. This finding is supported by findings 20 and 21, below.

20. The electrical output from the proposed project will be sold to GMP in accordance with a Purchase Power Agreement between Gas-Watt and GMP. That agreement meets the requirements of Board Rule 4.100. DeVarney pf. at 2; exh.V<sup>3</sup>, *also see* Power Purchase Agreement, filed on January 16, 2004.

21. The proposed project will result in an economic benefit to the local and regional economy by way of property and income taxes, yearly fees, monthly vendor services, construction contracting and potential job creation. DeVarney pf. at 5.

**Aesthetics, Historic Sites, Air and  
Water Purity, the Natural Environment and Public  
Health and Safety**

[30 V.S.A. § 248(b)(5)]

22. The proposed project will not have an undue adverse affect on aesthetics, historic sites, air and water purity, the natural environment and the public health and safety. This finding is supported by findings 23 through 49, below, which are based on the criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8), 8(A) and (9)(K).

**Outstanding Resource Waters**

[10 V.S.A. § 1424a(d)]

23. The proposed project does not rely upon any water resource and will not adversely affect any designated water resource within the State. DeVarney pf. at 6 & 8.

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3. A letter to the Board from GMP, dated November 13, 2003, which states that a Power Purchase Agreement between Gas-Watt and GMP had been reached in principal, wasl be admitted into the record as exh. V. Subsequently, a Short-Term Nonlevelized Power Purchase Agreement and Interconnection Agreement between GMP and Gas-Watt, dated December 5, 2003, were filed with the Board on January 16, 2004.

**Water and Air Pollution**

[10 V.S.A. § 6086(a)(1)]

24. The proposed project will not result in undue water and air pollution. This finding is supported by findings 26-38, below.

**Headwaters**

[10 V.S.A. § 6086(a)(1)(A)]

25. The proposed project is not located in a headwaters area. DeVarney pf. at 6.

**Waste Disposal**

[10 V.S.A. § 6086(a)(1)(B)]

26. The proposed project will meet any applicable Health Department and Environmental Conservation Department regulations regarding the disposal of wastes, and will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells. This finding is supported by findings 27-29, below.

27. Because there will be no disposal of waste products into the soils or water table at the proposed project site, no Health Department or Environmental Conservation Department regulations relating to such discharges are applicable. DeVarney pf. at 6; exh. L.

28. Condensate or liquid waste generated by the project will be collected utilizing a condensate knockout tank and storage tank located in a secondary concrete containment structure adjacent to the equipment building. These measures meet the requirements of the Department of Environmental Conservation, Solid Waste Program for collection of liquid waste. Exh. L.

29. At pre-determined levels, storage levels can be checked visually and fluid can be removed during pumping of the CWSD's leachate tank. Exh. L.

**Water Conservation**

[10 V.S.A. § 6086(a)(1)(C)]

30. The proposed project uses no water. DeVarney pf. at 6.

**Floodways**

[10 V.S.A. § 6086(a)(1)(D)]

31. The proposed project is not located in a floodway. DeVarney pf. at 6.

**Streams**

[10 V.S.A. § 6086(a)(1)(E)]

32. The proposed project is not located near a stream. DeVarney pf. at 6.

**Shorelines**

[10 V.S.A. § 6086(a)(1)(F)]

33. The proposed project will not be located near any shorelines. DeVarney pf. at 6.

**Wetlands**

[10 V.S.A. § 6086(a)(1)(G)]

34. The proposed project will not be located near any wetlands. DeVarney pf. at 6.

**Air Pollution**

35. The proposed project will not cause undue air pollution. This finding is supported by findings 36- 37, below.

36. The proposed project has been reviewed by the Agency of Natural Resources Air Quality Division and a draft Air Pollution Control Permit to Construct has been issued. Exhs. K and T.

37. Because of the proposed project's distance from neighboring developed areas, any noise generated by the project will have no significant impact on the these neighboring areas. Exh. Q.

**Sufficiency of Water And Burden on**

**Existing Water Supply**

[10 V.S.A. § 6086(a)(2)&(3)]

38. Since the proposed project uses no water, it will not draw down on any existing water supply. DeVarney pf. at 6.

**Soil Erosion**

[10 V.S.A. § 6086(a)(4)]

39. The small amount of construction involved with the proposed project will cause no deterioration of existing soil conditions. DeVarney pf. at 6.

**Traffic**

[10 V.S.A. § 6086(a)(5)]

40. The small number of daily trips to and from the proposed project site will not result in any measurable increase in area traffic. DeVarney pf. at 6.

**Educational Services**

[10 V.S.A. § 6086(a)(6)]

41. The proposed project will not require any educational services. DeVarney pf. at 6.

**Municipal Services**

[10 V.S.A. § 6086(a)(7)]

42. No municipal services, with the exception of fire protection, are necessary for the proposed project. DeVarney pf. at 6-7.

**Aesthetics, Historic Sites or Rare**

**And Irreplaceable Natural Areas**

[10 V.S.A. § 6086(a)(8)]

43. The proposed project will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, or rare or irreplaceable natural areas. This finding is supported by findings 44-47, below.

44. The proposed project is located within a landfill in a previously disturbed area. The location of the generation facility at this site will not detract from the character of the landfill or the surrounding area. The building site will not be visible from the neighboring developed areas or from the proposed Circumferential Highway (I-289). DeVarney pf. at 5-7; exh. Q.

45. The proposed project has undergone advisory review and approval by the Williston Development Review Board, which considered aesthetics, including noise generated by the project, as part of its review process. DeVarney pf. at 5; Exh. B.

46. The proposed generator building will be approximately 28' x 20', and painted green with a gray roof. DeVarney pf. at 5-6; exh. J & Q.

47. There are no historic, rare, or irreplaceable natural areas at the proposed project site. DeVarney pf. at 7.



### **Discussion**

Based on the above findings, I conclude that this project will not have an undue adverse effect on the aesthetics or scenic and natural beauty of the area. In reaching this conclusion, the Board has relied on the Environmental Board's methodology for determination of "undue" adverse effects on aesthetics and scenic and natural beauty as outlined in the so-called Quechee Lakes decision. *Quechee Lakes Corporation*, #3W04 1 1-EB and 3W0439-EB, dated January 13, 1986.

As required by this decision, it is first appropriate to determine if the impact of the project will be adverse. The project would have an adverse impact on the aesthetics of the area if its design is out of context or not in harmony with the area in which it is located. If it is found that the impact would be adverse, it is then necessary to determine that such an impact would be "undue." Such a finding would be required if the project violates a clear written community standard intended to preserve the aesthetics or scenic beauty of the area, if it would offend the sensibilities of the average person, or if generally available mitigating steps will not be taken to improve the harmony of the project with its surroundings. The Board's assessment of whether a particular project will have an "undue" adverse effect based on these three standards will be significantly informed by the overall societal benefits of the project.<sup>4</sup>

Given the facts of this case, it would be difficult to find that this project would have an adverse effect on the aesthetics of the area because the project will be located in a previously disturbed area of a landfill and will not be visible from neighboring developed areas.

### **Necessary Wildlife Habitat and**

### **Endangered Species**

[10 V.S.A. § 6086(a)(8)(A)]

48. Because the proposed project will be constructed at an existing landfill, it will have no adverse effect on necessary wildlife habitat and endangered species. Exh. Q.

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4. Consider, for example, reduction in need for power plant or transmission investments, or other social costs.

**Development Affecting Public Investments**

[10 V.S.A. § 6086(a)(9)(K)]

49. The proposed project will not be constructed in an area where public infrastructure would be impacted in any way by the normal operation of the facilities. DeVarney pf. at 7.

**Public Health and Safety**

[30 V.S.A. § 248(b)(5)]

50. The proposed project will have no adverse effect on public safety. The proposed construction will be done consistent with sound engineering and construction practices and in compliance with all safety and health standards. Tr. at 27-28.

51. The proposed project shall be constructed in accordance with the requirements of the National Electrical Safety Code. Public Service Board Rule No. 3.500; tr. at 27-28.

**Consistency with Resource Selection****Integrated Resource Plan**

[30 V.S.A. § 248(b)(6)]

52. Because the proposed project is a merchant electric generation facility, 30 V.S.A. § 248(b)(6) does not apply. DeVarney pf. at 7.

**Compliance With Electric Energy Plan**

[30 V.S.A. § 248(b)(7)]

53. The proposed project is in compliance with the DPS Vermont Electric Plan. The DPS has reviewed the petition, testimony, and information submitted in support of the petition. Based on its review, the DPS, by letter dated October 22, 2003, has determined that the proposed project is consistent with the Vermont Electric Plan. Exh U.

**Outstanding Water Resources**

[30 V.S.A. § 248(b)(8)]

54. The proposed project is not located on and will not affect any outstanding water resources. DeVarney pf. at 8.

**Existing Transmission Facilities**

[30 V.S.A. § 248(b)(10)]

55. The proposed project can be served economically by existing transmission facilities without an undue adverse effect on Vermont utilities or their customers. The proposed project will utilize existing GMP distribution facilities. DeVarney pf. at 8.

**III. CONCLUSION**

Based upon all the above evidence, the construction and operation of a landfill gas-fueled electric generating facility at the Chittenden Solid Waste District Landfill:

- (a) will not unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal and regional planning commissions, and the recommendations of the municipal legislative bodies;
- (b) is required to meet the need for present and future demand for service which could not otherwise be provided in a more cost-effective manner through energy conservation programs and measures and energy efficiency and land management measures;
- (c) will not adversely affect system stability and reliability;
- (d) will result in an economic benefit to the state and its residents;
- (e) will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment and the public health and safety, with due consideration having been given to the criteria specified in 10 V.S.A. § 1424a(d) and § 6086(a)(1) through (8) and (9)(K);
- (f) is consistent with the principles of least-cost integrated planning;
- (g) is in compliance with the electric energy plan approved by the DPS under § 202 of Title 30 V.S.A.;
- (h) does not involve a facility affecting or located on any segment of the waters of the State that has been designated as outstanding resource waters by the Water Resources Board; and

- (i) can be served economically by existing or planned transmission facilities without undue adverse effect on Vermont utilities or customers.

To the extent these findings are inconsistent with any proposed findings, such proposed findings are denied.

This Proposal for Decision, pursuant to 3 V.S.A. § 811, has been served upon the parties to this case.

Dated at Montpelier, Vermont, this 7<sup>th</sup> day of April, 2004.

s/Gregg Faber  
Gregg Faber  
Hearing Officer

**IV. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings of fact and conclusions of the Hearing Officer are adopted.
2. The construction and operation of a 90 kW landfill gas-fueled electric generating facility at the Chittenden Solid Waste District Landfill, located in the Town of Williston, Vermont, by Gas-Watt Energy, LLC, in accordance with the evidence and plans submitted in this proceeding will promote the general good of the State of Vermont, pursuant to 30 V.S.A. § 248.
3. A Certificate of Public Good, approving the construction and operation of the facility, shall be issued by the Board.
4. The Short-Term Nonlevelized Power Purchase Agreement and Interconnection Agreement, dated December 5, 2003, between Green Mountain Power Corporation and Gas-Watt Energy, LLC, is approved.

Dated at Montpelier, Vermont, this 7<sup>th</sup> day of April, 2004.

<u>s/Michael H. Dworkin</u>	)	
	)	
	)	PUBLIC SERVICE
<u>s/David C. Coen</u>	)	
	)	
	)	BOARD
	)	
<u>s/John D. Burke</u>	)	OF VERMONT

OFFICE OF THE CLERK

FILED: April 7, 2004

ATTEST: s/Judith C. Whitney  
Deputy Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*